IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1945.

No. 1139

IVY LANDRETH,

Petitioner,

vs.

WABASH RAILROAD COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

ROYAL W. IRWIN,
Attorney for Petitioner.

THE DUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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Cases Cited.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Ivy Wayne Landreth respectfully shows:

(1) Statement of Matter Involved.

The petitioner brought an action against the respondent in the United States District Court for the Northern District of Illinois, Eastern Division. The Complaint alleged that while the petitioner was employed by the railroad company as a skilled carpenter in the bridge and building department having to do with the building and maintenance of buildings essential to the movement of interstate transportation he was injured. This suit was brought under the Federal Employers' Liability Act to recover damages on account of negligence and it was alleged that both the

petitioner and the respondent at the time of the occurrence were engaged in interstate commerce. To this complaint, the respondent filed an answer.

Nine months later, the railroad company filed with the Industrial Commission of Illinois an application for adjustment of the claim of the petitioner setting forth that the petitioner while working in the course of his employment sustained an injury and praying that an award and decision be made thereon.

Petitioner contended that his injury occurred in interstate commerce and that whatever right he had to recover damages was under the Federal Employers' Liability Act. The Industrial Commission found that the petitioner and the railroad company were, at the time of the accident operating under and subject to the provisions of the Workmen's Compensation Act and that the petitioner sustained accidental injuries which arose out of and in the course of his employment. The Industrial Commission awarded him Workmen's Compensation.

The respondent railroad company thereupon filed an amendment to its answer in which respondent averred that it filed with the Industrial Commission an application for adjustment of the claim of petitioner setting forth that petitioner while working in the course and scope of his employment with the respondent railroad company sustained an injury as a result of an accident and requesting that the Industrial Commission make an award and decision in conformity with the statutes of Illinois.

It was further averred in said plea that at the time and place of the accident, respondent was engaged in carriage by land and employed more than two employees in its business and under the terms of the Workmen's Compensation Act, the provisions thereof apply and without election

applied to the respondent and to the petitioner, its employee.

It was further averred in said plea that upon the hearing of that matter before the Industrial Commission, the issue before the Commission was whether at the time and place of said accident, said railroad company and petitioner were engaged in intrastate commerce and subject to the terms and provisions of the Workmen's Compensation Act of Illinois, or engaged in interstate commerce and subject to the terms and provisions of the Federal Employers' Liability Act. (Tr. 13); and that the Industrial Commission of Illinois rendered its decision and found among other things that the petitioner and the respondent were at the time of the accident operating under and subject to the provisions of the Workmen's Compensation Act and that the petitioner sustained accidental injuries which arose out of and in the course of his employment. (Tr. 10.)

The decision of the Industrial Commission made no finding that the petitioner at the time of his injury was engaged in either interstate or intrastate commerce.

The petitioner moved to strike the respondent's amendment to its answer but the trial court overruled the petitioner's motion and the petitioner having elected to stand on his motion to strike respondent's amendment, the Court entered judgment against the petitioner. (Tr. 19.)

From the judgment of the trial court, petitioner appealed to the Circuit Court of Appeals for the 7th Circuit. The Circuit Court of Appeals affirmed the judgment of the District Court on the ground that the petitioner's claim was *res judicata* (Tr. 40).

(2) Basis of Jurisdiction of this Court.

(a) The jurisdiction of this Court is invoked under the provisions of the Federal Employers' Liability Act, 45 U.S.C.A. 827.

The judgment of the Circuit Court of Appeals sought to be reversed was entered January 18, 1946. The petition for rehearing was denied on February 7, 1946. The opinion is reported in 153 Fed. (2) 98.

(3) Questions Presented.

The judgment of the Circuit Court of Appeals, sought to be reviewed, affirmed the judgment of the District Court holding that the amendment to respondent's answer set up sufficient facts to establish the defense of *res judicata.*

The question presented by this petition is: Does the respondent's plea within its four corners set up facts necessary to constitute a defense of *res judicata.* The petitioner contends that while the issue presented to the Industrial Commission was whether the petitioner was engaged in interstate or intrastate commerce, that issue was not decided by the Industrial Commission. The findings that the injury arose in and out of the course of employment and that the parties were subject to the Workmen's Compensation Act, was not a finding that the petitioner was or was not engaged in interstate commerce, and unless the Industrial Commission decided the question, the award could not be pleaded in bar.

(4) Reasons for Allowance of Writ.

The Circuit Court of Appeals in this case has decided an important question of Federal law which has not been, but should be settled by this Court. Because of the frequency with which Industrial Commissions award compensation in cases where the parties are subject to the

Federal Employers' Liability Act, the questions of law involved ought to be decided. Because of the fact that the Federal law is supreme and exclusive, infringements upon those rights ought not to be willingly permitted.

The Circuit Court of Appeals has relied upon *Chicago R. I. & P. Co.* v. *Schendel,* 270 U. S. 611 as authority for its decision. The Court was in error in so doing because in that case, the Supreme Court expressly reserved decision on that point. The Supreme Court of the United States has never determined that an award of an Industrial Commission can be pleaded in bar as *res judicata.*

The Circuit Court of Appeals should not have considered *Chicago R. I. & P. Co.* v. *Schendel,* but rather the law as laid down by the highest courts of Illinois.

There is a conflict of decisions between the opinion of the Circuit Court of Appeals and the highest courts of the State of Illinois.

It is submitted that these reasons call for the exercise of this Court's power of review.

Wherefore the petitioner respectfully prays: That a writ of certiorari be issued out of and under the seal of this Court commanding the United States Circuit Court of Appeals for the 7th Circuit to certify and send to this Court for its review and determination on a day certain named therein a complete transcript of the record in the case numbered and entitled on its docket as No. 8889, *Ivy Landreth, Plaintiff-Appellant* v. *Wabash Railroad Company, Defendant-Appellee;* that the judgment of the Circuit Court of Appeals may be reversed by this Court; and that the petitioner may have such other and further relief as seems just.

IVY LANDRETH, Petitioner.
By ROYAL W. IRWIN,
Attorney for Petitioner.